



**Las Cruces Police Department
GENERAL ORDERS
FIELD OPERATIONS VOLUME 2
GO-293 SEARCH WARRANTS
Revised 5/13/2005**

293 SEARCH WARRANTS

293.01 SEARCH WARRANTS - GENERAL

A search warrant may be issued only upon probable cause, and must be supported by a written affidavit particularly describing the place to be searched, the property or person to be seized, the reason for the search and authorized by a judge of a competent court issuing the search warrant.

A warrant may be issued by Municipal Court, Magistrate Court or District Court to search for and seize:

- A. Any property which has been obtained or is possessed in a manner which constitutes a criminal offense.
- B. Any property designed or intended for use or which is or has been used as the means of committing a criminal offense.
- C. Any property which would be material evidence in a criminal prosecution; or
- D. Any person for whose arrest there is probable cause or who is unlawfully restrained. A warrant shall issue only on a sworn written statement of the facts showing probable cause for issuing the warrant.

Generally, a Magistrate Judge will issue any needed search warrants; however, if a city ordinance is to be charged, a Municipal Court Judge can issue a search warrant. The use of District Court Judges is usually reserved for those situations when a Magistrate Judge cannot be readily located, when a search warrant will be served outside of Dona Ana County, or when a No-Knock warrant is being sought.

293.02 COMPLETING A SEARCH WARRANT AFFIDAVIT

The Affidavit for Search Warrant presented to a Magistrate Judge shall be based on the personal knowledge of the affiant officer and/or information received from an informant whose reliability shall be established at the time the warrant is issued. Each item targeted by the search warrant shall be listed appropriately in the Affidavit.

The officer shall describe with particularity the premises or vehicle to be searched. A warrant to search a premise does not automatically extend to include the search of a person



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on the premises at the time. If officers have probable cause to search certain persons who may be present, the officers shall include those persons in the affidavit. When drafting an affidavit requesting a nighttime search, the officer must be able to show good cause for conducting a nighttime search. Daytime hours are considered between 6:00 o'clock a.m. and 10:00 o'clock p.m. and are generally preferred for search warrant execution. The judge issuing the warrant must authorize a nighttime search before one can be conducted.

If the limit for daytime hours is approaching and the officer obtaining the search warrant is unable to proceed to the scene, the officer should contact other Departmental personnel to execute the warrant once the warrant has been signed.

An officer seeking a no-knock search warrant must be able to show good cause for conducting a no-knock entry and search. Only a District Court Judge can authorize a no-knock search warrant.

The officer obtaining a search warrant shall submit the affidavit to the District Attorney's Office or ADA on-call for review and approval prior to submission to a Magistrate Judge, unless the warrant is being issued by a Municipal Court Judge.

293.04 OBTAINING A SEARCH WARRANT

A completed Affidavit for Search Warrant and the unsigned Search Warrant itself shall be presented to the Magistrate Judge for signature.

Only sworn testimony, in addition to the affidavit, can be appropriately considered by the Magistrate Judge prior to the issuance of the warrant. Therefore, any communication in support of the Affidavit must be reduced to writing and shall be made under oath. If the Magistrate Judge questions the officer after reading the affidavit, and asks for additional information which he or she relies on to issue the search warrant, the officer must reduce that verbal information provided to the Magistrate Judge in writing on the affidavit before the search warrant can be issued.

293.05 EXECUTING A SEARCH WARRANT

In order to ensure proper execution of a search warrant, the following procedures shall be adhered to:

Before Execution - A supervisor will oversee all search warrant execution. Exceptions can be made for search warrants executed on property at the main police station, search



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warrant executed for business or hospital records, when those records are located on the premises belong to a third party, and when no resistance is anticipated, or for search warrants executed at the Dona Ana County Detention Center.

A pre-search warrant execution briefing shall be held for all search warrant situations with the above exceptions, especially when forced entry is expected. The briefing shall include, at minimum, information regarding any raid and / or arrest operations planning involving the following:

- A. All personnel involved and their assignments
- B. Diagrams, sketches, photographs and / or maps of the target location
- C. Special equipment needed such as body transmitters, recording devices, video equipment etc.

As soon as practical after an officer believes a search warrant may be executed, a surveillance of the target location shall be conducted, unless the premises are already secured. The supervisor shall be notified, and if security or the element of surprise will not be compromised, dispatch shall be notified of the location where the search warrant will be executed. If the warrant is served anywhere outside the City of Las Cruces, the agency overseeing the jurisdiction where the warrant is to be served will be notified.

293.06 KNOCK AND ANNOUNCE

Officers are to knock and announce their authority and purpose prior to all search warrant entries unless a District Court Judge has authorized an unannounced entry. Officers may use force to enter the premises if there is no answer to the knock.

293.07 SERVING THE SEARCH WARRANT

Any deviation from established search warrant execution procedures will be cleared beforehand through the appropriate Deputy Chief. When knocking and announcing, officers shall make their presence known to the occupants of the premises to be searched. Officers shall announce their intention in a voice loud enough to be heard by the occupants, making it known that they are police officers, that they have a search warrant, and that the occupants must allow officers to immediately enter.



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When the supervisor anticipates forced entry into an occupied structure and/or the need to use force against the occupants, the supervisor shall:

- A. Make provisions for communications and specialized equipment needs.
- B. Coordinate required assistance from specialized support units, (*e.g.*, SWAT).
- C. Consider availability of medical resources.
- D. Develop strategies and tactics for approaching, entering, securing and leaving the structure.
- E. Discuss the threat potential and the anticipated necessity for using force and making arrests with all members of the entry and search teams beforehand.

When the potential for violence is considered significant, the supervisor in charge of the operation will review the plan of execution with their immediate supervisor in order to evaluate the effectiveness of the proposed plan and to obtain approval of necessary action.

A sworn supervisor shall be in charge of all search warrant execution operations. The supervisor designated to do so will have possession of the search warrant and hand it directly to the person upon whom the warrant is being served. The supervisor should explain the purpose of the search warrant at that time. If the location is unoccupied, copies of the search warrant, the affidavit, and the return inventory shall be left at the location in a conspicuous place. The supervisor shall be in attendance of all pre-operation briefings and shall be in appropriate uniform for the duration of the search warrant execution operation. The supervisor is responsible for all notifications, warrant information review, warrant procedure conduct and security, appropriate memos, cassette tape recordings of procedure and other tactical or administrative details.

All officers involved in the initial entry shall wear body armor. Supervisors may permit exceptions to this requirement, (*i.e.*, ruses etc.), but those exceptions will be documented by the supervisor in a memorandum to be placed in the case file with a copy forwarded to the Professional Standards Unit. Uniformed patrol supervisors and officers will be used as circumstances dictate but, will be returned to their regular duty assignments as soon as practical.

Undercover officers whose dress and appearance are not conventional for law enforcement personnel at the time of the execution will not be part of the search warrant entry team, and normally will not be in view of any persons inside the premises until entry has been accomplished.



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Photographs shall be taken of any damage caused by the execution of the warrant. The damage shall be described within the case report and a memo with the appropriate report number forwarded to the Professional Standards Unit. The supervisor will also ensure that Risk Management is notified.

293.08 SEIZURE OF PROPERTY

Although several officers may engage in the search, only one officer shall be designated the "Finder." That officer is responsible for documenting the circumstances of the search and seizure of all property. A second officer shall be designated as the "Recorder" and will be responsible for marking, sealing, photographing, and recording the evidence.

Officers may search only in those places where the evidence they seek may be found. For example, an officer may not search for a sawed-off shotgun in a matchbox. During the execution of the search warrant, officers conducting the search may seize those items described in the warrant. Any other items of potential evidentiary value located during the course of the search should not be seized without a second search warrant. The presence of those additional items and their description shall be noted on a second Affidavit for Search Warrant.

When an officer seizes property under a search warrant, a detailed return of inventory of the property seized will be given to the person from whom the property was taken. If the property is seized when a person is not present, a return of inventory will be left in a conspicuous location where the property was found. Any officer present and participating in the search may sign the return of inventory.

293.09 RETURNING THE SEARCH WARRANT

A search warrant shall be executed within ten days of the date of issue. However, most search warrants should be executed immediately after its issuance. The search warrant, affidavit, and return of inventory shall be returned to the court of issuance as soon as practical, but no later than three days after the execution of the search warrant unless authorized by the District Attorney's Office.